

OPEN MEETING ITEM  
ORIGINAL



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COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

22

DATE: June 6, 2006

DOCKET NO.: T-02585A-05-0710

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Order on:

INTER-TEL NETSOLUTIONS, INC.

(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 15, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman  
5 WILLIAM A. MUNDELL  
6 MARC SPITZER  
7 MIKE GLEASON  
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF  
10 INTER-TEL NETSOLUTIONS, INC. FOR A  
11 CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY TO PROVIDE RESOLD LOCAL  
13 EXCHANGE TELECOMMUNICATIONS  
14 SERVICES.

DOCKET NO. T-02585A-05-0710

DECISION NO. \_\_\_\_\_

ORDER

11 Open Meeting  
12 June 27 and 28, 2006  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the  
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 FINDINGS OF FACT

18 1. On March 19, 1997, Decision No. 60107 authorized Inter-Tel NetSolutions, Inc.  
19 ("Inter-Tel" or "Applicant") to provide resold long distance service in Arizona.

20 2. On October 7, 2005, Inter-Tel filed with the Commission an application for a  
21 Certificate of Convenience and Necessity ("Certificate") to provide residence and business  
22 competitive resold<sup>1</sup> local exchange telecommunications services within the State of Arizona.

23 3. On December 8, 2005 and March 30, 2006, Inter-Tel filed responses to Data Requests  
24 in this docket.

25 4. On May 8, 2006, the Commission's Utilities Division ("Staff") filed a Staff Report  
26 recommending approval of the application. The Staff Report addressed the overall fitness of Inter-  
27 Tel to receive a Certificate and also addressed whether its services should be classified as competitive

28 <sup>1</sup> In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers  
("resellers") are public service corporations subject to the jurisdiction of the Commission.

1 and whether its initial rates are just and reasonable.

2       5.       Regarding Applicant's technical capability to provide the requested services, Staff  
3 stated that Inter-Tel currently is authorized to provide local exchange service in several states, and is  
4 authorized to provide long distance services throughout the United States. Inter-Tel, Inc., the parent  
5 company of Inter-Tel, was founded in 1969 and has over 2,000 full-time employees offering voice  
6 and data communications solutions systems, voice mail systems, and networking applications for  
7 customers in North America, Europe, Australia, South Africa, and Asia. The parent company is  
8 headquartered in Tempe, Arizona; Inter-Tel is headquartered in Phoenix, Arizona. Staff stated its  
9 belief that Inter-Tel has the technical capability to provide the services it has requested the authority  
10 to provide.

11       6.       Regarding Applicant's financial capability to provide the requested services, Staff  
12 stated that Applicant provided unaudited financial statements for the nine months ending September  
13 30, 2005, which list assets of \$9,657,715, equity of \$4,130,254, and net income of \$3,977,035. Inter-  
14 Tel indicated in its proposed local exchange service tariff that it will not collect advances, deposits,  
15 and/or prepayment from its customers. However, Staff stated that since the Applicant is requesting a  
16 Certificate for only resold local exchange service and advances and deposits will not be collected, a  
17 limited bond is appropriate. Staff recommends that Inter-Tel be required to procure a performance  
18 bond in the amount of \$25,000, with increases of the minimum bond amount if at any time it would  
19 be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's  
20 customers. Staff recommended that the bond amount should be increased in increments of \$12,500  
21 when the total amount of advances, deposits, and/or prepayments is within \$2,500 of the bond  
22 amount. If Inter-Tel desires to cancel service, it must file an application with the Commission  
23 pursuant to A.A.C. R14-2-1107. Staff further recommended that at least 60 days prior to filing an  
24 application to discontinue service, Inter-Tel be required to notify each of its customer and the  
25 Commission of its intent to file such an application. Staff stated that failure to meet this requirement  
26 should result in forfeiture of Inter-Tel's performance bond. Staff recommended that proof of the  
27 performance bond be docketed within 365 days of the effective date of this Decision or 30 days prior  
28 to the provision of services, whichever comes first, and must remain in effect until further order of

1 the Commission.

2 7. Inter-Tel seeks to provide service in areas where both an incumbent local exchange  
3 carrier ("ILEC") and various competitive local exchange carriers ("CLECs") already provide  
4 telecommunications service. Staff stated that Applicant would exert no market power and that the  
5 reasonableness of its rates will be evaluated in a market with numerous competitors. Staff believes  
6 that the rates in Applicant's proposed tariffs for its competitive services will be just and reasonable  
7 and recommends that the Commission approve them.

8 8. Generally, rates for competitive services are not set according to rate of return  
9 regulation. Regarding establishing rates and charges, Staff has determined that Applicant's initial fair  
10 value rate base ("FVRB") will be zero at the end of the first 12 months of operation<sup>2</sup>. Staff has  
11 reviewed the rates to be charged by the Applicant and believes they are just and reasonable, as they  
12 are comparable to the rates of other CLECs and ILECs offering service in Arizona and to the rates  
13 Inter-Tel charges in other jurisdictions. Therefore, while Staff considered the FVRB information  
14 submitted by the Applicant, that information should not be given substantial weight in this analysis.

15 9. Commission rules provide pricing flexibility by allowing competitive  
16 telecommunication service companies to price their services at or below the maximum rates  
17 contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109.  
18 This requires the Applicant to file a tariff for each competitive service that states the maximum rate  
19 as well as the effective (actual) price that will be charged for the service. Any changes to the  
20 Applicant's effective (actual) price for a service must comply with A.A.C. R14-2-1109, which  
21 provides that the minimum rates for the applicant's competitive services must not be below the  
22 Applicant's total service long run incremental costs of providing the services. The Applicant's  
23 maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on  
24 file with the Commission. Future changes to the maximum rates must comply with A.A.C. R14-2-  
25 1110.

26  
27  
28 <sup>2</sup> Applicant's current assets include nearly \$100,000 of personal property in Arizona; these are not directly involved in the delivery of telecommunications services.

1 **Local Exchange Carrier Specific Issues**

2       10.     Number portability is essential to local exchange competition, as competition may not  
3 be vigorous if customers, especially business customers, must change their telephone numbers to take  
4 advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws,  
5 federal rules and A.A.C. R14-2-1308(A), Inter-Tel must make number portability available to  
6 facilitate the ability of a customer to switch between authorized local carriers within a given wire  
7 center without changing the customer's telephone number and without impairment to quality,  
8 functionality, reliability or convenience of use.

9       11.     Commission rules require that all telecommunications service providers that  
10 interconnect into the public switched network shall provide funding for the Arizona Universal  
11 Service Fund ("AUSF"). Inter-Tel must make monthly payments into the AUSF pursuant to A.A.C.  
12 R14-2-1204(B).

13       12.     Staff recommended that Inter-Tel be required to abide by the quality of service  
14 standards that were approved by the Commission for Qwest (f/k/a US West) in Decision No. 59421  
15 (December 20, 1995), Docket No. T-01051B-93-0183; however, because penalties imposed in that  
16 docket were due to Qwest's unsatisfactory level of service and Inter-Tel does not have a similar  
17 history of service quality problems, Staff does not recommend that those penalties apply in the instant  
18 docket. In the competitive market the applicant wishes to enter, the Applicant will generally have no  
19 market power and will be forced to provide a satisfactory level of service or risk losing its customers.  
20 Therefore, Staff believes it is unnecessary to subject Inter-Tel to those penalties at this time.

21       13.     Staff expects that there may be areas where Inter-Tel installs the only local exchange  
22 service facilities. In the interest of competition, Staff recommended that Inter-Tel be prohibited from  
23 barring access to alternative local exchange service providers who wish to serve such areas. Access  
24 to alternate providers should be provided pursuant to the 1996 Telecommunications Act, the rules  
25 promulgated thereunder and Commission rules regarding interconnection and unbundling.

26       14.     Inter-Tel has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal  
27 Communications Commission 47 CFR §§ 64.3001 and 64.3002 it will provide all customers with 911  
28 and E911 service where available, or will coordinate with ILECs and emergency service providers to

1 provide 911 and E911 service.

2 15. Inter-Tel may, consistent with past Commission decisions, offer Caller ID provided  
3 that per call and line blocking, with the capability to toggle between blocking and unblocking the  
4 transmission of the telephone number, are provided as options to which customers could subscribe  
5 with no charge. Inter-Tel must offer Last Call Return service that will not return calls to telephone  
6 numbers that have the privacy indicator activated, indicating that the number has been blocked.

7 **Complaint Information**

8 16. Staff stated that the Commission's Consumer Services and Compliance sections have  
9 found Inter-Tel to be in good standing and compliance, respectively. Inter-Tel is authorized to  
10 provide local exchange service in Colorado, Georgia, Illinois, Missouri, New Jersey, New York and  
11 Texas. Inter-Tel certified that none of its officers, directors or partners has been involved in any civil  
12 or criminal investigations, formal or informal complaints; and also stated that none of its officers,  
13 directors or partners has been convicted of any criminal acts in the past ten years.

14 **Competitive Services Analysis**

15 17. Inter-Tel seeks to enter a local exchange market with a number of CLECs already  
16 authorized to provide service; however, ILECs hold a dominant position in the local exchange service  
17 market. At locations where ILECs provide local exchange service, Inter-Tel will enter the market as  
18 an alternative provider of local exchange service. Applicant will have to compete with those  
19 companies in order to obtain customers.

20 18. Qwest and other ILECs are the primary providers of local exchange service in Arizona  
21 and have a large share of the market. Several CLECs and local exchange resellers also provide local  
22 exchange service and generally have a limited market share. Cox Telecom is the only CLEC  
23 believed to have captured significant market share in the Phoenix and Tucson metropolitan areas.  
24 Inter-Tel will not have the capability to adversely affect prices or restrict output to the detriment of  
25 telephone service subscribers.

26 19. Inter-Tel is not affiliated with any alternative providers of local exchange service.

27 20. Both ILECs and CLECs have the ability to make functionally equivalent or substitute  
28 services readily available at competitive rates, terms and conditions as Inter-Tel.

**Staff's Recommendations**

21. Staff recommended that Applicant's application for a Certificate to provide competitive resold local exchange telecommunications services be granted subject to the following conditions:

- (a) That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services.
- (b) That the Applicant abides by the quality of service standards that the Commission approved for Qwest in Docket No. T-01051B-93-0183.
- (c) That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities.
- (d) That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number.
- (e) That the Applicant cooperates with Commission investigations including, but not limited to, customer complaints.
- (f) That the rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero.
- (g) That, if at some future date, the Applicant wants to collect advances, deposits and/or prepayments from its resold local service customers, the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the decision in this docket and explain the Applicant's plans for procuring its increased performance bond.
- (h) That the Applicant offers Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge.
- (i) That the Applicant offers Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated.
- (j) That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

22. Staff further recommended that Applicant's resold local exchange Certificate should be conditioned upon the following:

- (a) Applicant shall file a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The tariffs submitted must conform with the application and state that the Applicant does not collect advances,

deposits and/or prepayments from its customers.

(b) Applicant shall provide proof of procuring a performance bond as described below, and file proof of that performance bond within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The performance bond must remain in effect until further order of the Commission.

(c) Applicant shall procure a performance bond in the initial amount of \$25,000, with the minimum bond amount of \$25,000 to be increased if at any time it would be insufficient to cover all advances, deposits, prepayments collected from its customers, in the following manner: The bond amount should be increased in increments of \$12,500, with such increases to occur whenever the total amount of the advances, deposits or prepayments reaches a level within \$2,500 under the actual bond amount.

23. Staff recommended that if the Applicant fails to meet the timeframes outlined in Finding of Fact No. 24 above, then Applicant's resold local exchange Certificate should become null and void after due process.

24. The rates proposed by these filings are for competitive services.

25. Staff's recommendations as set forth herein are reasonable.

### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold local exchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive the Certificate as conditioned herein for providing competitive resold local exchange services in Arizona.

6. Staff's recommendations are reasonable and should be adopted.

### ORDER

IT IS THEREFORE ORDERED that the application of Inter-Tel NetSolutions, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange

services is hereby granted conditioned upon its compliance with the conditions recommended by Staff as set forth above.

IT IS FURTHER ORDERED that if Inter-Tel NetSolutions, Inc. fails to meet the timeframes outlined in Finding of Fact No. 22, above, then the resold local exchange Certificate of Convenience and Necessity conditionally granted herein shall become null and void.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Finding of Fact No. 21 above are hereby adopted.

IT IS FURTHER ORDERED that Inter-Tel NetSolutions, Inc. shall comply with the adopted Staff recommendations as set forth in Finding of Fact No. 21 above.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2005.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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SERVICE LIST FOR: INTER-TEL NETSOLUTIONS, INC.  
DOCKET NO.: T-02585A-05-0710

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